

REPORT - PLANNING COMMISSION MEETING
September 26, 2002

Project Name and Number: Pacific Commons Vesting Tentative Tract Map 7380 and Preliminary Grading Plan (PLN2002-00263)

Applicant: Catellus Development Corporation

Proposal: To consider Vesting Tentative Tract Map 7380 and a Preliminary Grading Plan to implement the Planned District Major Amendment (approved by City Council on July 23, 2002) modifying the approved land use and circulation plans for the Planned Development known as Pacific Commons (P-2000-214) in the Industrial Planning Area.

Recommended Action: Approve, based on findings and subject to conditions.

Location: The Pacific Commons site bounded on the north by Auto Mall Parkway, on the west by the Auto Mall Planned District (P-88-15), on the east by Christy Street, and on the south by Bunche Drive and Brandin Drive, in the Industrial Planning Area.

Assessor Parcel Numbers: 525-1326-005-00, 525-1326-006-00

Area: Approximately 102.78 acres

Owner: Catellus Development Corporation

Agent of Applicant: Sean Whiskeman, Catellus Development Corporation

Consultant: Kevin Weiss, JMH Weiss Engineering

Environmental Review: An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An addendum was prepared and adopted for the Planned District Major Amendment finding the project to be consistent with the original plan and EIRs. This Vesting Tentative Tract Map and Preliminary Grading Plan implement the Planned District Major Amendment.

Existing General Plan: Restricted Industrial with a Commercial-Industrial overlay, R (C-I)

Existing Zoning: Planned District, P-2000-214

Existing Land Use: Vacant

Public Hearing Notice: Public hearing notification is applicable. A total of 287 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Stevenson Boulevard, Auto Mall Parkway, Cushing Parkway, Albrae Street, Boyce Road, Boscell Road, Auto Mall Circle, Nobel Drive, Enterprise Street, Industrial Drive, Northport Loop, Brandin Court, and Christy Street. The notices to owners and occupants were mailed on September 16, 2002. A Public Hearing Notice was delivered to The Argus on September 11, 2002 to be published by September 16, 2002.

Background and Previous Actions: On May 9, 2000, the City Council adopted the Design Guidelines and Development Standards for the Pacific Commons Planned District (P-2000-214).

On July 23, 2002, the City Council approved a Planned District Major Amendment (PLN2002-00263) to modify the approved land use and circulation plans for the Planned District known as Pacific Commons (P-2000-214).

Project Description: This proposed Vesting Tentative Tract Map 7380 and Preliminary Grading Plan implement the land use and circulation plan changes of the recently approved Planned District Major Amendment. Vesting Tentative Tract Map 7380 proposes 37 lots and 1 parcel for open space use. The smallest lot is approximately 0.74 acre and the largest, approximately 14.58 acres in size. Access to the project site from the north will be Christy Street, Braun Street, and Cushing Parkway. Access from the south will be via Cushing Parkway. Pacific Commons Boulevard will remain as the project's focal point, with a 900-foot commons area in the center of the street and up to 12 story buildings along either side of the street. At the time of final map submittal for specified groupings of lots, site plans for that grouping of lots will be reviewed by staff to ensure that the proposed final map is consistent with the intent of the planned district conditions and the Development Standards and Guidelines. Final map submittals will also trigger a determination by the City Engineer as to the required public improvements needed to serve and access the lots proposed by the final map.

Project Analysis:

General Plan Conformance: The existing General Plan land use designation for the project site is Restricted Industrial with a Commercial-Industrial overlay. The project is consistent with the existing General Plan land use designation for the project site because the proposed Vesting Tentative Tract Map and Preliminary Grading Plan implement an approved Planned District Major Amendment which allows for the development of a major retail, office, research & development uses in Pacific Commons. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Fundamental Goal 8—A diversity of residential, recreational, cultural, employment and shopping opportunities.

Fundamental Goal 9—A large diversified industrial and commercial base to meet the employment needs of the City's present and future workforce.

Land Use Policy 3.2—The general plan allows warehouse retail and large-scale regional retail uses on sites with convenient freeway access and where the proposed use is compatible with the purpose of the industrial area.

Land Use Policy 3.3—The general plan allows for commercial uses providing necessary services and large-scale regional retail in industrially designated areas.

Zoning Regulations: The zoning designation for the subject property is Planned District, P-2000-214. The Planned District provisions were recently modified by a Planned District Major Amendment which allows for the development of a stand-alone major retail center, the expansion of auto dealership uses, and a reduction of the required minimum building height for a limited area of the project site. The Planned District Major Amendment also outlined the discretionary review process for the development of projects within the new Major Retail Area, included the rezoning of two parcels from Pacific Commons Planned District to the Auto Mall Planned District, and involved the necessary amendments to the Pacific Commons Option Agreement.

This Vesting Tentative Tract Map and Preliminary Grading Plan implement those approved modifications to the circulation and parcelization within Pacific Commons, as approved by the Planned District Major Amendment.

Circulation/Access Analysis: The applicant will submit to the City the proposed internal circulation and street geometry with the first final map for each sub area (as defined in Conditions 14 through 19 of the Pacific Commons Planned District Major Amendment), subject to the review and approval by the City Engineer. The internal circulation plan will show the connection of the internal streets in the sub areas and how the sub areas will be provided access to Auto Mall Parkway or Cushing Parkway. The applicant will be required to install the public improvements in phases to run concurrently with the development in each sub area as proposed by the Planned District Major Amendment and Vesting Tentative Tract Map. In regard to Pacific Commons Boulevard, the City Engineer may approve revisions to the final roadway sections required by the conditions of approval based on the detailed circulation analysis performed for the area surrounding the Boulevard, provided that those changes are consistent with the Land Use, Circulation and Parking Guidelines. Any major revision to the approved alignment of the major internal streets (i.e. Christy Street, Braun Street, and Pacific Commons Boulevard) will be referred to the Planning Commission and City Council for review and approval.

Within Pacific Commons, the general circulation plan is addressed through a hierarchy of streets intended to promote travel efficiency for vehicles, pedestrian and bicycles. The proposed street system includes major roads, secondary streets, service roads and pedestrian linkages laid out in grid-like patterns.

The following lists the requirements for the major project street segments for the Major Retail Center:

A. Auto Mall Parkway.

1. The applicant will dedicate additional right-of-way across the site's frontage between Christy Street and Braun Street to provide 4 lanes for the eastbound traffic at this section of Auto Mall Parkway. The additional lane is a traffic mitigation requirement of the EIR for the applicant's development. The final roadway geometric will be a 7-lane, divided roadway with bike lanes in both directions. The roadway will be provided with a 20-foot sidewalk and landscaped area at the northerly side and a 10-foot PUE and a 25 foot- landscape and trail easement at the southerly side.
2. The applicant will dedicate the required right-of-way to provide for a dual left turn lane for the westbound Auto Mall Parkway traffic making a left turn to Braun Street into the development. The additional lane is a traffic mitigation requirement of the EIR for the applicant's development.
3. The applicant will provide 3 lanes for the eastbound traffic on Auto Mall Parkway between Braun Street and Boyce Road. The final roadway geometric will be a 7 lane-divided roadway with bike lanes in both directions and a 20-foot and 25-foot landscaped area.

B. Braun Street.

Braun Street will be extended into the proposed development as a major secondary road. Braun Street will provide the connection between Auto Mall Parkway and Cushing Parkway. Braun Street will be provided with a right-of-way of 110 to 128 feet and a cross section consisting of 4 lanes, median and 5-foot bike lanes on each side.

Grading & Drainage: The topography of the approximately 103-acre site is characterized as a low-lying flat terrain. The lay of the land slopes from the northeasterly limits adjacent to Auto Mall Parkway and Christy Street at 22 feet above mean sea level (AMSL), to the southwesterly limits at elevation 15 feet AMSL. The proposed grades for the site ranges between 16 feet AMSL (above mean sea level) and 21 feet AMSL. The applicant's estimate for the earthwork quantities for the preliminary grading plan is 99,000 cubic yards (c.y.) and 92,700 c.y. of cut and fill, respectively. There is approximately 6,300 c.y. of excess earthwork. The excess material will be used on other areas of the Pacific Commons Development. No offhaul of materials is proposed.

The applicant will utilize the existing Alameda County Flood Control and Water Conservation District's (District) Zone 6, Line N-1 flood control channel located at the southerly limits of Pacific Commons as was proposed for Vesting Tentative Tract 7200. The Master Storm Drainage plan submitted by the developer will contain the site's storm runoff within the development and will be conveyed to a Storm water Treatment Area approximately 15 acres in size prior to being released to the District's Zone 6, Line N-1 drainage facility. In addition to the Storm water Treatment Area the applicant is also proposing several storm water quality measures for Post Development BMP's (Best Management Practices) in response to the City's Clean Water Program. The features include the provision for grassy swales adjacent to parking lots, storm drain inlet filters, and water treatment ponds or wet ponds for the larger campus-type development sites and major retail center. The master drainage plan showing the major storm drain lines and tributaries including the hydrology analysis will be subject to the review and approval by the District and the City Engineer with the first final map for the proposed development.

The applicant is proposing a positive overland drainage release for the developed portion of the site to convey storm water in the event the capacity of the underground system is exceeded. The positive overland release for the Major Retail Center may run along the western boundary of the Planned District (western edge of Lots 2, 3, 4, 5 and 37) and continue to Bunche Drive. From Bunche Drive the positive overland release will continue its proposed route on Cushing Parkway

between Lots 72 and 73 of VTM 7200 and will channel the storm runoff to the water treatment pond located in Parcel E of VTM 7200. From the treatment pond excess storm runoff would eventually drain into the railroad right-of-way abutting the westerly limits of Pacific Commons.

The Federal Clean Water Act (1972) and Water Quality Act (1987) requires localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. Adopted regulations require discharges of storm water associated with new development and construction to submit a Notice of Intent (NOI) to the State of California for activities disturbing five acres of land area. The NOI is to include the development and implementation of a Storm Water Pollution Prevention Plan emphasizing Best Management Practices for storm water. The conditions for the storm clean water program are included in the conditions of approval for the preliminary grading plan.

Urban Runoff Clean Water Program: The applicant will be required to conform to the City's Urban Runoff Clean Water Program requirements. Conditions of approval are included in the preliminary grading plan to reflect this requirement.

Development Impact Fees: This project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, park facilities, capital facilities and traffic impact. These fees shall be calculated at the fee rates in effect at the time of building permit issuance.

Underground Existing Overhead Utility Lines. The applicant will underground all existing overhead utility lines in accordance with the City's utility underground ordinance.

Environmental Analysis: An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An addendum was prepared and adopted for the Planned District Major Amendment finding the project to be consistent with the original plan and EIRs. This Vesting Tentative Tract Map and Preliminary Grading Plan implement the Planned District Major Amendment.

Response from Agencies and Organizations: No responses have been received.

Enclosures: Exhibit "O" (Vesting Tentative Tract Map 7380, Preliminary Grading Plan, Master Striping Plan, Master Storm Drainage, Master Sanitary Sewer, and Master Water Plan)
Exhibit "P" (Findings and Conditions of Approval for Vesting Tentative Tract Map 7380)
Exhibit "Q" (Findings and Conditions of Approval for Preliminary Grading Plan)
Informational (Addendum to the Supplemental EIR for Pacific Commons and accompanying Traffic Study, approved by City Council on July 9, 2002.)

Exhibits: Exhibit "O" (Vesting Tentative Tract Map 7380, Preliminary Grading Plan, Master Striping Plan, Master Storm Drainage, Master Sanitary Sewer, and Master Water Plan)
Exhibit "P" (Findings and Conditions of Approval for Vesting Tentative Tract Map 7380)
Exhibit "Q" (Findings and Conditions of Approval for Preliminary Grading Plan)

Recommended Actions:

1. Hold public hearing.
2. Find that an EIR and Supplemental EIR were previously approved for the Pacific Commons project; an addendum was prepared and adopted for the Planned District Major Amendment finding the project to be consistent with the original plan and EIRs; and this Vesting Tentative Tract Map and Preliminary Grading Plan implement the Planned District Major Amendment.

3. Find PLN2002-00263 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan as enumerated within the staff report.
4. Approve PLN2002-00263 Vesting Tentative Tract Map 7380 and Preliminary Grading Plan, as shown on Exhibit "O", subject to findings and conditions on Exhibit "P" (Vesting Tentative Tract Map 7380) and Exhibit "Q" (Preliminary Grading Plan).

EXHIBIT "P"
Findings and Conditions of Approval for PLN2002-00263
VESTING TENTATIVE TRACT MAP 7380 (VTTM-7380)

FINDINGS

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated September 26, 2002, incorporated hereby, and the testimony at the public hearing.

1. The proposed map satisfies the requirements and conditions imposed by the Subdivision Map Act and the City of Fremont Subdivision Ordinance because the procedural requirements of the Map Act are being followed and the proposed lots conform to the standards set forth in the Subdivision Ordinance.
2. The site's suitability for the type and proposed intensity of development has been analyzed in the Draft Supplemental EIR--86-85 dated May 1, 1996 (State Clearinghouse #8721715) and Final Supplemental EIR 86-85 dated July 26, 1996 (State Clearinghouse #'s 8721715 and 96052016 and the Draft Supplemental EIR 86-85, dated January 31, 2000 and Final Supplemental EIR dated April 14, 2000 (SCH # 1996052016) (collectively the EIR) and in the staff report to the Planning Commission dated April 27, 2000. The EIR concluded the site to be appropriate for development as proposed based upon the implementation of identified mitigation measures set forth herein and in other entitlements for the project. An addendum to the EIR and Supplemental EIR was prepared and adopted (July 23, 2002) for the Planned District Major Amendment finding the project to be consistent with the original plan and EIRs. This Vesting Tentative Tract Map and Preliminary Grading Plan implement the Planned District Major Amendment.
3. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan and any applicable specific plans since the proposed lot configuration is in conformance with the **Restricted Industrial with Commercial-Industrial overlay, IR(C-I)** requirements of the General Plan.
4. The site is physically suitable for the type and proposed density of the development since the proposed lot configuration is in conformance with the **Planned District, P-2000-214 and PLN2002-00263 Major Amendment** requirements.
5. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially or unavoidably injure fish or wildlife or their habitat, because the subdivision design incorporates mitigation measures described in the EIR which will reduce identified impacts to a non-significant level. Cumulative traffic and circulation impacts cannot be totally mitigated, and are therefore identified as unavoidable impacts that are the subject of a Statement of Overriding Considerations.
6. The design of the subdivision, and the type of improvements are not likely to cause serious public health problems because the EIR has not identified health risks associated with the subdivision of the project site. At this time, other than the Major Retail Use, the other specific future uses of the site are not known. Any proposed use of hazardous materials within the project boundaries must receive a Hazardous Materials Storage Permit as set forth in the Fremont Municipal Code.
7. The design of the subdivision and the type of improvements proposed with this project will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision, because the easements are incorporated into the design of the subdivision. Acquisition of any new easements is required prior to final map approval.
8. Except as otherwise provided by the 2000 Amended and Restated Development Agreement (City file numbers PLN2000-00214 and PLN2002-00263) entered into by the City and the applicant/developer for this project, all on-

site public improvements or facilities required as a part of this approval are directly attributable to the proposed development, and are required for reasons related to public health, safety and welfare.

CONDITIONS:

Notes:

1. An asterisk (*) has been included for those conditions of approval required as mitigation measures set forth in the EIR. Facts in Support of Findings and Statements of Overriding Considerations as set forth in Exhibit "I" of the report on the General Plan Amendment, Planned District and Amended and Restated Development Agreement (City File Number PLN 2000-214) considered by the Planning Commission for this Project on April 27, 2000, were based upon having the stated mitigation measures included as conditions of approval for this Project.
2. Any capitalized terms in the following conditions not otherwise defined shall have the meaning defined in the 2000 Amended and Restated Development Agreement, regardless of whether it is in effect.

General Issues

- A-1. Conformance with staff amended Exhibit "O", attached hereto and made a part hereof.
- A-2. This Vesting Tentative Tract Map (VTTM) is being conditionally approved based on the accuracy of the information shown on Exhibit "O" and submitted with the VTTM application. If any of the information is shown to be inaccurate subsequent to approval of the VTTM by the City, such inaccuracy may be cause for invalidating this approval.
- A-3. PLN2002-00263 shall be subject to all the Conditions of Approval of PLN2000-00214, except as modified or superseded by these conditions. Applicant must comply with all of the following:
- Resource Agency Requirements
 - Perimeter Trail/Bay Trail Requirements
 - Transportation Demand Management Requirements
 - Relocation of the potential Transit Site
 - Finalization of an Option Agreement Amendment.
- A-4. The project shall conform with the Development Agreement, Planned District, (PLN-2000-214), Major Amendment PLN 2002-00263, Exhibit "O" and all the conditions of approval set forth in these Conditions of Approval for Vesting Tentative Tract Map 7380 (collectively referred to as the Tract Map 7380 Conditions).
- A-5. Building construction plans shall be submitted to the Development Organization for review and approval to ensure conformance with the relevant codes, policies, and other applicable requirements of the Fremont Municipal Code, as well as all the Tract Map 7380 Conditions. Streamlining procedures contained in the Planned District's Standards and Guidelines document for this project shall be utilized in the Development Organization's Site Plan and Architectural approval process.
- A-6. The applicant shall comply with the City's Hazardous Materials Ordinance.
- A-7. Prior to the approval of each final map for this project, the applicant shall have obtained demolition permits for the removal of any structures currently on the site and shall have completed such demolition.
- A-8. As long as the Development Agreement is in effect, the Development Impact Fees shall be paid in the manner specified in the Development Agreement. If the Development Agreement is terminated under Subsection 8.7(b) of that document, the fees shall be imposed under the applicable provisions of the State Subdivision Map Act, based on the

1996 vesting date for the previous Vesting Tentative Tract Map. If the Development Agreement is terminated under Subsection 8.7(a) or Subsection 8.7(c) of the Development Agreement, or expires by its own terms, the Development Impact Fees shall be paid in the manner that would have applied if the Development Agreement had not terminated.

- A-9. The applicant/developer shall retain a Native American Observer in the event any archaeological materials and/or human remains are discovered during the construction phase of the proposed project. All personnel involved in ground clearing, grading or trenching associated with the project shall be alerted to the possibility of discovery of archaeological materials and instructed to stop work in the immediate area of any find. Once work has been stopped, it will be the responsibility of the applicant to retain a qualified archaeologist, subject to the approval of the City of Fremont, to inspect the find and make necessary plans for the evaluation and mitigation of impacts to any materials still in the area slated for land alteration.

In the event any human remains are discovered, it will be the responsibility of the archaeologist who inspects the find to make a determination of their origin. If aboriginal, the County Coroner shall be notified and instructed to contact the Native American Heritage Commission. The Commission is required to notify a Most Likely Descendent who will meet with the applicant in order to come to an agreement about the method of removal and the place of reinternment of ancestral remains.

- A-10. The developer shall prepare a Construction Water Quality and Protection Plan to be implemented for all construction contracts, subject to approval of the City Engineer and the Regional Water Quality Control Board. Such plan shall include requiring:

- Performing major vehicle maintenance, repair jobs and equipment washing off-site;
- Maintaining all construction vehicles and heavy equipment and inspecting frequently for leaks;
- Designating one area of the construction site, well away from any streams, wetland restoration area and storm drain inlets, for equipment parking and routine equipment and vehicle maintenance;
- Cleaning up spilled dry materials immediately, not washing them away or burying them;
- Minimizing water use for dust control;
- Cleaning up liquid spills on paved and impervious surfaces using "dry" clean up methods (i.e., absorbent materials such as, cat litter, rags);
- Cleaning up spills on dirt areas by removing and properly disposing of contaminated soils;
- Reporting significant spills to the appropriate spill response agencies;
- Storing stockpiled materials, wastes, containers and dumpsters under a temporary roof or secured plastic sheeting;
- Properly storing containers of paints, chemicals, solvents and other hazardous materials in water tight garages or sheds with double containment during rainy periods;
- Placing dumpsters under roofs or covering them with plastic sheeting at the end of each work day and during rainy weather;
- Washing out concrete mixer only in designated wash-out areas where the water will flow into settling ponds or onto stockpiles for aggregate base or sand. Whenever possible, recycling washout by pumping back into mixers for reuse. Prohibiting disposing of washout into streets, storm drains, drainage ditches or streams or wetland areas;
- Applying concrete, asphalt and seal coat during dry weather. Keeping contaminants from fresh concrete and asphalt out of the storm drains and streams and wetland areas by scheduling paving jobs during periods of dry weather, allowing new pavement to cure before storm water flows across it;
- Covering catch basins and manholes when applying seal coat, slurry seal, fog seal, etc.;
- Parking paving machines over drip pans or absorbent materials, since they tend to drip continuously.

- Construction workers shall be educated regarding appropriate management practices to prevent erosion or drainage from construction areas from impacting the Wetland Preserve or off-site areas.
- A-11. The applicant shall underground all overhead utility lines in accordance with the City's amended underground ordinance.
- A-12. The applicant shall establish a mechanism in the Pacific Commons CC&R's to provide for the periodic maintenance of all the frontage landscaping and Open Spaces that are not maintained by the Community Facilities District, subject to the approval by the City Engineer.
- A-13. The City of Fremont shall promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul, its approval and shall cooperate fully in the defense thereof.
- A-14. The applicant shall defend, indemnify, and hold harmless the City of Fremont or its agents, officers, or employees in connection with any claim, action or proceeding to attack, set aside, void, or annul, an approval of the City of Fremont, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code. This indemnification shall be provided in accordance with the Development Agreement.
- A-15. The applicant shall be required to post performance bonds for all improvements required by the Planned District, Planned District Major Amendment, Development Agreement, or Tract Map 7380 Conditions the City Engineer requires to be performed in connection with any particular final map.
- A-16. The fees, dedications, reservations and/or other exactions imposed on this project are those stated on the conditions of map approval consistent with the Development Agreement and Applicable Laws.
- A-17. Prior to the recordation of any final map for Lots 2, 5, 12, 18, 29, 31, 32, 34, and 37, the existing 20-foot Oil Pipeline easement shall be abandoned.
- A-18. The applicant is required to provide a cash payment to the City of Fremont for imaging the recorded final map(s) and "Record" improvement plans. The applicant is also required by ordinance to provide the City with a mylar copy of the recorded final map(s) subsequent to its recordation, and to provide a mylar copy of the "Record" improvement plans prior to acceptance of the improvements by City Council.
- A-19. Land uses shall conform to those allowed by the approved Planned District and Planned District Major Amendment for this project. Future proposed development shall implement and be consistent with mitigation measures required by this vesting tentative tract map.
- A-20. Minor amendments to the Vesting Tentative Tract Map ("VTTM") may be approved by the Assistant City Manager. Minor amendments may be referred to the Planning Commission if he or she determines that the minor amendment will result in sufficient change in the project which would be appropriate for the Planning Commission to review. Major Amendments require Planning Commission approval. For purposes of this condition, Major Amendments are defined as those that would result in a material departure from the project as initially contemplated and approved, such as, materially changing the overall permitted density and intensity of use, proposing less than three story buildings along Pacific Commons Boulevard, the deletion of planned plazas and other open spaces along Pacific Commons Boulevard, materially increasing overall peak hour-traffic generation, or materially reducing overall public dedication of lands. Minor amendments are those that would not materially change the map as a major amendment would. For minor amendments, the approving entity shall not impose additional exactions or conditions of approval or apply New City Laws (as defined in the Development Agreement), it otherwise could not apply to planned district under the Development Agreement during the period it is in effect.
- A-21. * The Developer shall comply with the requirements of the following Natural Resources Agencies permits and approvals as determined by those agencies:
- The U.S. Army Corps of Engineers Permit Number 220851S issued September 7, 1999;

- The Biological Opinion prepared by the U. S. Fish and Wildlife Service's Sacramento Field Office dated May 14, 1999 and entitled "Formal Endangered Species Consultation on the Proposed Pacific Commons Project, Fremont, Alameda County, California (Number 1-1-99-F-0004)";
- Order Number 99-061 of the California Regional Water Quality Control Board San Francisco Bay Region dated July 23, 1999 and entitled "Waste Discharge Requirements For: Catellus Land Development Corporation and the City of Fremont Pacific Commons Site, Fremont, Alameda County" ;and
- The Mitigation Agreement dated August 8, 1997, and the Amendment to Mitigation Agreement, Pacific Commons Project in Fremont, California between Developer and the California Department of Fish and Game dated January 20, 1999.

The EIR/Mitigation and Monitoring Plan as approved by those Natural Resource agencies will take into account the 2000 Supplemental EIR and the permits and approvals by the Natural Resource Agencies, will monitor the implementation of mitigation measures required for this project, including but not limited to the planned district, vesting tentative tract map and preliminary grading plan conditions of approval.

A-22. SUBDIVIDER PLEASE NOTE :

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of tentative parcel map approval. Any fee, dedication, reservation or other exaction is deemed imposed on the date of this tentative parcel map approval (9/26/02). The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date they are imposed. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.

Traffic/Circulation Issues

- B-1. Right-of-way dedication and installation of public improvements may be done in phases subject to the review and approval of the City Engineer. All rights-of-way and improvements, including new traffic signals, within the boundaries of each phase of the development shall be required with the final map for that phase. In addition, the City Engineer may require the developer to install any offsite improvements and dedicate right-of-way to provide necessary access and circulation to the phase proposed for development.
- B-2. The developer shall dedicate all the required rights-of-way and install all the necessary street improvements as shown in the various cross-sections indicated on the Vesting Tentative Tract Map 7380. The developers shall install all the offsite street improvements as indicated on Vesting Tentative Tract Map 7380.
- B-3. The developer shall dedicate the "Pedestrian/Public Access and Trail Easement" as shown on the Vesting Tentative Tract Map 7380. The final location of the 25-foot wide segment of the easement shall be established with each final map abutting a segment of the easement subject to the review and approval by the City Engineer.
- B-4. For the first final map within each phase, the Developer shall submit a detailed circulation analysis to confirm site design submitted as required by conditions 14-19 of the Planned District Major Amendment Exhibit "C" (PLN2000-00263). The internal circulation plan will show the connection of the internal streets in the sub areas to the major streets providing access to the development. Any major revision to the approved alignment of the major internal streets (i.e. Christy Street, Braun Street, and Pacific Commons Boulevard) shall be referred for consideration to the Planning Commission and City Council.
- B-5. The developer shall submit for review and approval the hydrology study and the master drainage plan for the proposed development to Alameda County Flood Control District and the City.
- B-6. The developer shall underground all existing utility overhead lines along the developer's frontages in accordance with the City's Utility Underground Ordinance.

- B-7. Plans must be submitted to the Development Organization for review to insure conformance with relevant codes, policies, and other requirements of the Fremont Municipal Code.
- B-8. The fees, dedications, reservations and/or other exactions imposed on this project are those stated on the conditions of map approval.
- B-9. Any fee, dedication, reservation or other exaction is deemed imposed on the date of final City approval of the vesting tentative tract map.
- B-10. A landscape plan shall be submitted with the improvement plans for each site proposed for development indicating full details regarding (1) paving materials and textures of walkways, (2) lighting of walkways and driveways with low intensity nonglare type fixtures, (3) screening of driveways and parking areas, and (4) landscaping of site and parkway areas.
- B-11. Prior to the approval and acceptance of the first final map the applicant shall submit the master utility plans for the water and sewer system for the whole development for review and approval by the Alameda County Water District and Union Sanitary District, respectively.
- B-12. The Developer shall provide bus stops and bus shelters, subject to the approval of the City Engineer and consistent with the Transportation Demand Management plan.
- B-13. Any additional traffic signals required beyond the four receiving TIF credits as noted in the PLN 2000-214 approvals, will be the responsibility of the Developer.

Soil. Geology, Grading Issues

- C-1. * The applicant/developer shall submit a detailed soils report for each phase including recommendations regarding structural sections, prepared by a qualified soils engineer registered by the State of California. This information shall be reviewed and accepted by the City Engineer prior to the acceptance of the first Final Map. The recommendations of those soil reports shall be incorporated into the project phases subject to the approval of the City Engineer.
- C-2. * The applicant/developer shall adhere to the recommendations of the soils report to mitigate the potential effects of any expansive soils on the site.
- C-3. * Prior to demolition, excavation and grading of each phase of the project, all underground obstructions (i.e., debris, septic tanks, fuel tanks, barrels, chemical waste) within that phase shall be identified and removed pursuant to Federal, State and local regulations, pursuant to the review and approval of the City's Hazardous Materials Division. Excavations shall then be properly backfilled using structural fill, subject to the review and approval of the City Engineer.
- C-4. The applicant/developer shall be responsible for providing slope easements from adjacent properties for all roadways stubbed to the tract boundary, in the event that the applicant/developer cannot obtain the necessary easements, cash in-lieu of construction for uncompleted improvements will be an acceptable alternative, subject to the approval of the City Engineer. All cash deposits shall include an escalation factor of 7 percent per year for five years.
- C-5. Prior to the commencement of any site work, the applicant shall show proof of evidence a Notice of Intent has been submitted to the State in compliance with the State of California Water Resources Control Board order No. 92-08-DWQ and National Pollution Discharge Elimination System Permit No. CAS00D002.
- C-6. Grading operations for roadways and on-site building pads shall be supervised by a registered civil engineer in accordance with recommendation contained in the approved soils report for this project site.

C-7. * Prior to granting a grading permit, the Assistant City Manager shall determine that the following studies have been completed and their recommendations implemented:

- a. A survey for the northern harrier nesting sites shall be performed by a qualified biologist during the breeding season (June through July) prior to any grading or other ground disturbing activities during those months. If nesting sites are found, they shall not be disturbed during the breeding season and protective measures shall be developed by the biologist and approved by the Assistant City Manager. A mitigation plan prepared by the biologist and approved by the City shall be developed for those nesting sites that will be disturbed by the project construction after the breeding season. This Mitigation Plan may be incorporated into the wetland mitigation plan required for the project. The mitigation plan shall at a minimum create the same number of nesting sites that are disturbed by the project construction.

In the alternative, a survey of the entire project site prior to grading during the breeding season, shall be performed by a qualified biologist. If northern harrier nesting places are found, and avoidance is not practicable, the extent of impacts to the project site shall be assessed and a comprehensive mitigation plan including minimum standards for northern harrier preservation shall be developed by a qualified biologist and approved by the City.

C-8. * Surveys of burrowing owls in accordance with survey protocols contained in the Staff Report on Burrowing Owl Mitigation, CDFG, September 25, 1995, shall be performed by a qualified biologist prior to commencement of any construction activities in areas of burrowing owl observances and in areas with mounds, berms or other suitable ground-nesting locations. No more than 30 days prior to the commencement of any grading, diskings, testing or construction of buildings on the project site, a site investigation, subject to the approval of the Development Organization, shall be completed in each phase by a qualified wildlife biologist to determine if burrowing owls are present on the project site. If a determination is made that burrowing owls are found to nest on the site, all work that would destroy such nests shall halt until the wildlife biologist has recommended appropriate actions to be taken to protect the owls and relocate the nesting sites at the appropriate time, if determined to be appropriate. Relocation of the owls shall be completed in accordance with the biologist's recommendations and any applicable State laws.

Drainage Issues

- E-1. The developer/applicant shall include storm quality measures in the storm drainage design for the development, in accordance with the City's storm water runoff quality requirements.
- E-2. Prior to the approval of the first final map or building permit within the development, the applicant shall obtain the approval of a master drainage plan, including phasing, from the Alameda County Flood Control District and the City.
- E-3. The Pacific Commons CC&R's for the subdivision shall contain provisions for individual property owners to maintain private storm drains within each lot and retention facilities if needed.
- E-4. Site grading and drainage is subject to the approval of the Development Organization Engineer at the time of building permit issuance. Site grading must not obstruct natural flow from abutting properties or divert drainage from its natural watershed.

Public Utilities

- F-1. Final plans for each phase of the wastewater system extensions shall be approved by the Union Sanitary District prior to the approval of each final map.
- F-2. Final plans for the water distribution system for each phase shall be approved by the Alameda County Water District and the City of Fremont Fire Department prior to the approval of each final map.

- F-3. * The existing wells on the site shall be abandoned for each phase in accordance with Alameda County Water District regulations. The applicant shall provide funding for all well abandonments. The applicant/developer shall provide evidence of the removal and/or capping of all wells on the project site prior to the approval of each final map for this project.
- F-4. * The developer shall install water lines for recycled water for future use should recycled water become feasible, subject to the approval of the Alameda County Water District.

Relationship with Development Agreement Issues

- G-1. Pursuant to the state Subdivision Map Act, this VTTM will be implemented through multiple final maps. This VTTM confers a vested right to the developer and its successors in interest to proceed with development of the Project and the Project Site in substantial compliance with this VTTM approval, its conditions and exhibits, and the following ordinances, policies and standards in the following circumstances:
- (a) So long as the Development Agreement remains in effect, the ordinances, policies and standards described in Section 3.2 of the Development Agreement as constituting the Applicable Law.
 - (b) If the Development Agreement is terminated due to a developer default, the ordinances, policies and standards in effect on the Effective Date of the Development Agreement; provided, however, that to the extent there is any inconsistency between the terms of the VTTM approval, its conditions and exhibits, and the ordinances, policies and standards in effect on the Effective Date of the Development Agreement, the terms of the VTTM approval, its conditions and exhibits shall control.
 - (c) If the Development Agreement is terminated due solely to a City default, the ordinances, policies and standards in effect on the date that the application for the 1996 Vesting Tentative Tract Map was deemed complete.
- G-2. Subject to condition G-5 herein, the vested rights conferred by this VTTM approval shall last for the longer of:
- (a) The life of the Development Agreement.
 - (b) The collective total of the life of: the VTTM, any final map approved as a result of the VTTM, any building permits and their extensions related to construction of buildings on parcels shown on a final map approved as a result of this VTTM, and any other extension provided by local or state law.
 - (c) If the Development Agreement is terminated due to a default by the developer, the vested rights set forth in this Section shall last only for the period described in subsection (b) herein, not subsection (a).
- G-3. The City shall grant developer or its successor any and all VTTM extensions, final map extensions and building permit extensions allowed by the Fremont Municipal Code. However, notwithstanding the foregoing, the City may condition or deny an extension request if it determines that (a) failure to do so would place the occupants of the Project Site or the immediate community, or both, in a condition dangerous to their health and safety; or (b) the condition or denial is required in order to comply with state or federal law.
- G-4. In the event the Development Agreement is terminated due to developer default, the following additional conditions and requirements will automatically become effective:
- a. The Developer shall be subject to the same terms with respect to the imposition of Impact Fees as described in paragraph 3.2(g) of Article 3 of the Development Agreement, as if the Development Agreement had not been terminated and remained in full force and effect. In the event of termination due to developer default, the provisions to Article 3, paragraph 3.2(g) of the Development Agreement are hereby incorporated by reference in this condition.

- G-5. In implementation of Section 8.7.C. of the Development Agreement, if the developer or the City terminates the Development Agreement pursuant to their respective rights under Section 8.6 of the Development Agreement and there has been no default by the other party, or if a judgment invalidates or otherwise makes ineffective all or any portion of the Development Agreement or the 1996 and 2000 Approvals (as defined in the Development Agreement) and the developer and the City are unable to readopt or reenact the invalidated provisions of the Development Agreement or the 1996 and 2000 Approvals following conduct of the process described in Section 9.2 of the Development Agreement, then this VTTM shall terminate and be of no further force or effect as to the entire Project Site.

END OF CONDITIONS

EXHIBIT "Q"
Findings and Conditions of Approval for PLN2002-00263
Preliminary Grading Plan

FINDINGS:

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated September 26, 2002, incorporated herein, and the testimony at the public hearing.

1. The proposed project described in the application will not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance.
2. The proposed project described in the application will not result in geologic or topographic instability on or near the site. Based on geologic information available, the site is not in a special studies zone. There are no fault zones on the site, which might be aggravated by the grading of the development. A soil study will be conducted and submitted to the City prior to recordation of each Final Map.
3. The proposed project described in the application will not endanger public sewers, storm drains, water courses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The adequacy of the existing sewer, water and drainage facilities proposed for the project will be subject to the review and approval of the City and the different utility agencies. The proposed development will not alter or obstruct the natural flow from abutting properties or divert drainage from its natural watershed. The applicant will be required to submit a plan to control erosion and siltation during and after construction for review and approval by the City Engineer.
4. Conformity, where applicable, to special concerns relating to the adopted Seismic Safety Element and concerns shown on maps issued by the U.S. Geological Survey and the California Division of Mines and Geology shall be accomplished at time of each Final Map. The City Engineer upon City review of the reports may require supplemental data and substantiation of conclusions. The proposed development is not in any special studies zone nor is there evidence of presence of any fault or active slides per maps issued by the U.S. Geological Survey and the California Division of Mines and Geology.
5. The proposed project described in the application will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont.

CONDITIONS:

1. Conformance with Exhibit "O", Preliminary Grading Plan, and all the conditions of approval of Tentative Tract Map 7380, Pacific Commons Major Amendment (PLN2002-00263), and all other approvals of PLN-2000-214.
2. Approval of this Preliminary Grading Plan does not extend to the final detailed construction design. A Grading Permit application shall be submitted to the City, subject to the review and approval by the City Engineer.
3. The final grading plan may be completed in phases, subject to the review and approval by the City Engineer. The final grading within the boundaries of each phase of the development shall be required with the final map for that phase. In addition, the City Engineer may require the developer to perform any offsite grading in order to make the grading work conform to the adjacent grade outside of the phase proposed for development.
5. Prior to the approval of the first final map or building permit within Tentative Tract Map 7380, the applicant shall obtain approval of a master drainage plan, including phasing, from the Alameda County Flood Control District and the City.

6. All the proposed work on the flood control Channel N-1 shall be subject to the approval and shall comply with the standards of the Alameda County Flood Control District.
7. The applicant should provide measures to prevent the discharge of sediments and/or untreated water, and contaminated materials directly into the District Line N-1 drainage facility. It is the responsibility of the applicant to comply with Federal, State, or local water quality standards and regulations.
8. Prior to the approval of the first final map or building permit the applicant shall perform an analysis to determine if the soil on the site has the potential for causing corrosion and the need for any special design and grading requirements to mitigate the corrosion if necessary.
9. Grading operations shall be supervised by an engineer registered in the State of California to do such work. City staff will assume inspection responsibility for street grading at a point six inches below planned subgrade.
10. The applicant shall provide for a functional system to control erosion and siltation during and after completion of the preliminary grading work for each. A separate plan shall be submitted by the applicant for this purpose and prior to the issuance of the grading permit for the phase proposed for development and shall be subject to the review and approval by the City Engineer and the District. All erosion control measures shall be in place by October 1, of each construction season.
11. The applicant shall provide adequate dust control measures at all times during the grading and hauling operations. All trucks hauling export and import materials shall be provided with tarp cover at all times. Spillage of haul materials and mud-tracking on the haul routes shall be prevented at all times. Any violation shall be subject to the suspension of the grading permit.
12. The source and haul route for the import fill shall be subject to the approval of the City Engineer prior to the issuance of the grading permit.
13. Construction operations shall be limited to the following hours:

7:00 a.m. to 7:00 p.m. – Monday through Friday

9:00 a.m. to 6:00 p.m. – Saturday and Sunday
14. The applicant shall submit a Letter of Map Revision ((LOMR) to FEMA after completion and acceptance of the final grading plan to remove the lots proposed for development from the flood zone.
15. Prior to issuance of a grading permit for land disturbance greater than five acres, developer is to provide evidence that a Notice of Intent has been filed with the State of California Water Resources Control Board. The developer is responsible for insuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).
16. Approval of this preliminary grading plan shall not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
17. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed except by specific approval.
18. The applicant shall be required to provide post-construction control methods and improve water quality which may include onsite grassy swales or treatment ponds subject to the approval of the State Regional Water Quality Control Board (SRWQCB). Preliminary design of these facilities shall be submitted with the improvement plans prior to final map approval within each phase of the development. Final details will be required in conjunction with onsite grading and drainage plans.

19. The approval of the preliminary grading plan shall run concurrent with the approved Tentative Tract Map 7380 as provided in Condition G-2 of the VTTM.
20. The applicant may be allowed grading deviation in pad grades and street grades up to a maximum of two feet (plus or minus) between the preliminary grading plan and the final grading plan for each lot. Deviation over one foot may be referred to the Planning Commission subject to the review of the City Engineer. The City Engineer may approve minor deviations beyond two feet when they relate to grassy swales or treatment ponds.
21. The developer is responsible for insuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).
22. All cut and fill slopes shall be constructed to a maximum of three horizontal to one vertical (3:1).
23. All public and private storm drain inlets are to be stenciled "No Dumping-Drains to Bay" using stencils purchased from the Alameda County Urban Runoff Clean Water Program at 951 Turner Court, Hayward, Calif. Color and type of paint to be as approved by the City Engineer.
24. Prior to the issuance of any building permits for structures within the project site, the applicant/developer shall submit "record drawings" showing final grades for the rough grading work on any approved lot or lots.
25. All retaining walls shall be limited to a maximum height of 3 feet. All retaining walls over one foot in height or supporting surcharge shall be approved masonry construction. All retaining walls over three feet or supporting a surcharge shall be subject to a building permit.
26. Individual lots shall be provided with a separate underground storm drain system. No overland flow shall be allowed to flow onto the public roadway.
27. The CC&Rs for the development shall contain provisions for the individual property owners, or Project Owner's Association to maintain any proposed private storm drain systems and treatment pond within each lot.
28. The applicant/developer shall a detailed soils report for each phase including recommendations regarding pavement structural sections, prepared by a qualified soils engineer registered by the State of California. This information shall be reviewed and accepted by the City Engineer prior to the acceptance of the first Final Map for such phase. The City Engineer shall required appropriate sections of the soils report to be incorporated into the project phases.
29. Prior to demolition, excavation and grading of each phase of the project, all underground obstruction (i.e., debris, septic tanks, fuel tanks, barrels, chemical waste) within that phase shall be identified and removed pursuant to Federal, State and local regulations and subject to the review an approval by the City's Hazardous Materials Division. Excavations shall be properly backfilled using structural fill, subject to the review and approval of the City Engineer.
30. The applicant shall obtain a final grading permit in conjunction with each final map. All final grading work shall be subject to the review and approval by the City Engineer.
31. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grate elevations are to be a minimum of 0.75 feet above the hydraulic grade line.
32. The developer of any phase shall be responsible for providing slope easements from adjacent properties for streets stubbed to the phasing boundary.

33. All trash and recycling areas are to be completely covered. No other area shall drain to the enclosed area. Drains in any wash area or process area shall not discharge to the storm drain. Drains should connect to the sanitary sewer subject to approval of the Union Sanitary District.
34. The applicant/developer, or Property Owner's Association is responsible for the maintenance of any Common Area. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides and pesticides which can contribute to urban runoff pollution.
35. The applicant/developer, or Property Owner's Association shall be responsible for litter control and sweeping of all paved surfaces located in the common areas. All on-site storm drains are to be cleaned immediately before the commencement of the rainy season (October 15).
36. The applicant/developer, or Property Owner's Association is to periodically provide educational materials on storm water pollution prevention (as furnished by the City) to all members.
37. All washing/steam cleaning must be done at an appropriately equipped facility which drains to the sanitary. Outdoor washing must be managed in such a way there is no discharge of soaps, solvents, cleaning agents, or other pollutants to the storm drains. Wash water should discharge to the sanitary sewer subject to review and approval of the Union Sanitary District.
38. All loading dock areas are to be designed to prevent run off onto or from the area. A regular program of sweeping, litter control and spill clean up is to be implemented through the Project CC&R's.
39. Developer at time of initial sale of individual parcels shall provide to the buyer information on good housekeeping of hazardous products, i.e. proper use and disposal, prohibited discharges practices, etc. The City will furnish information materials. Contact the Engineering Division at (510) 494-4700.
40. Outdoor storage areas are to be designed to minimize the runoff of pollutants.
41. The applicant shall consult with the Fremont Fire and Police Departments to determine appropriate access to the site for emergency response prior to the commencement of grading activities.
42. The final grading plans are required to be prepared, signed and stamped by a California-licensed Civil Engineer.

END OF CONDITIONS